

MINUTES OF THE REGULAR MEETING OF THE GEORGETOWN CHARTER TOWNSHIP
ZONING BOARD OF APPEALS HELD FEBRUARY 24, 2016

The meeting was called to order at 7:30 p.m. by Chairperson Tom Healy.

Members Present: Tom Healy, D. Dale Mohr, Joyce Weise, Greg Honderd, Kelly Walkotten
Members Absent: None
Others Present: Mannette Minier, Secretary and Zoning Administrator

#160224-01 – Approval of the minutes

The minutes of the regular meeting held on September 23, 2015 were presented.

Moved by Joyce Weise, seconded by D. Dale Mohr, to approve the minutes as presented.

MOTION CARRIED UNANIMOUSLY.

#160224-02 – (VAR1603) Heyboer Holdings, LLC, 5001 40th Ave., is requesting to have multiple family dwellings (apartments) with three stories, a variance of a half of a story from the maximum of two and a half stories allowed in Chapter 24, and for the parcel to have a 90 foot width, a variance of 60 feet is needed from the minimum of 150 feet required in Chapter 24 footnote (g), in a (HDR) High Density Residential district, on a parcel of land described as P.P. # 70-14-13-200-030, located at 303 Baldwin St., Georgetown Township, Ottawa County, Michigan ([application](#), [letter](#), [loft elevations](#), [loft layout](#), [townhouse elevations](#), [townhouse layout](#), [site plan](#))

The zoning administrator presented a [staff report](#). She noted that the Planning Commission had initiated a Zoning Ordinance revision to eliminate the regulations of stories in a building since the number of stories did not impact a building and rather the mean height has the impact. She noted that the ordinance revision would be on the March 16, 2016 Planning Commission meeting agenda for a public hearing and on the Board agenda on March 28, 2016, making it effective about the middle of April after publication. At that time with the ordinance revision, no variance would be needed in this instance since the proposed height was less than the maximum height allowed.

Nate Heyboer represented the applicant and presented the request.

Joyce Weise noted that the site was in a floodplain.

Greg Honderd stated the following. He was not certain where the numbers for a maximum of 2.5 stories and 35 feet in mean height came from. He speculated that it was based on a fire truck's ability to fight a fire. That is no longer relevant since the Fire Department has trucks that can fight fires much higher than that. Likely the height of a building is regulated due to aesthetics so that it does not overwhelm the adjacent sites. For example, the Waterford buildings were allowed to be taller; however, they were located in the middle of the property with a good distance to neighboring houses. The Planning Commission did not initiate a Zoning Ordinance revision to allow a mean height greater than the current number of 35 feet because a developer could seek a variance if a greater height was needed and other elements, such as distance to other buildings, could be evaluated.

D. Dale Mohr said that he was just curious and wondered if it was due to density.

The zoning administrator stated that density was still regulated in another section of the ordinance and in the Master Plan.

Greg Honderd said that most zoning districts have a maximum height of 35 feet.

Tom Healy said that this development is consistent with the area because another multi-family development exists to the east of this site.

D. Dale Mohr asked if this was by the river.

Nate Heyboer said that the Ottawa County Parks owns the northern portion of this strip of land that abuts the river.

The chairman opened the public hearing. No one was present to speak at the public hearing. The chairman closed the public hearing.

Moved by Kelly Walkotten, seconded by D. Dale Mohr, to adopt the staff report as findings of fact and to approve variance (VAR1603) Heyboer Holdings, LLC, 5001 40th Ave., to have multiple family dwellings (apartments) with three stories, a variance of a half of a story from the maximum of two and a half stories allowed in Chapter 24, and for the parcel to have a 90 foot width, a variance of 60 feet from the minimum of 150 feet required in Chapter 24 footnote (g), in a (HDR) High Density Residential district, on a parcel of land described as P.P. # 70-14-13-200-030, located at 303 Baldwin St., Georgetown Township, Ottawa County, Michigan; based on the finding that the request has unique circumstances and meets the seven standards of the ordinance as noted in the staff report.

Greg Honderd said that the request meets the seven standards.

Tom Healy said that he concurs that the request meets the seven standards and that standards 5 and 3 were met due to the unique features of this nonconforming lot, including that it is in a floodplain. He said that it is a validation of the property with the unique conditions and there is a property right to make it economically viable.

Joyce Weise said that the property is close to another multi-family property.

Tom Healy said that it will be more economically valuable to the Township

MOTION CARRIED UNANIMOUSLY.

#160224-03 – Public Comments

Ed Hooze, 4457 Forest Edge Ct., stated the following. He has been in business for 11 selling sweatshirts and tee shirts. On weekends he sold them from a tent in the church parking lot at the corner of 48th Ave. and Fillmore successfully in 2010, 2011 and 2012. But his application was denied in 2013 because the determination was made that his business was not seasonal. Now he sells across the street and he went to Blendon and Olive Townships. But he wanted to continue to sell in Georgetown at the corner because it was very successful. He asked the ZBA to interpret the use of selling sweatshirts and tee shirts as a seasonal or periodic event.

#160224-04 – Other Business

The zoning administrator explained the following and presented documentation regarding temporary uses. She had made a determination based on the language of the ordinance, since she is the one with the responsibility to administer and enforce the ordinance, as follows.

1. Relevant Zoning Ordinance Sections**Sec. 2.94 TEMPORARY BUILDING AND USE.**

A structure or use permitted by the Zoning Administrator to exist during periods of construction of the main building or for special events, which period may not exceed six (6) months.

Sec. 2.45 GARAGE, PRIVATE.

A building used primarily for the storage of self-propelled vehicles for the use of the occupants of a lot on which such building is located. The foregoing definition shall be construed to permit the storage on any one lot, for the occupants thereof, of commercial vehicles not exceeding a rated capacity of one (1) ton.

Sec. 2.21 COMMERCIAL.

This term relates to the use of property in connection with the purchase, sale, barter, display, or exchange of goods, wares, merchandise or personal services or the maintenance of service offices or recreation or amusement enterprise or garage/basement sales operating more than twelve days during any one twelve month period.

Sec. 3.25 TEMPORARY USES OR STRUCTURES REQUIRING ZONING ADMINISTRATOR AUTHORIZATION.**(B) Seasonal Uses.**

- (1) The Zoning Administrator, upon receiving an application, may issue a permit for the temporary sale of merchandise in any district, related to a seasonal or periodic event. Such seasonal uses shall include the sale of Christmas trees, fireworks, farm produce at roadside stands, and similar activities.
- (2) In considering a request for a temporary permit, the Zoning Administrator must determine that the operation of such a use is seasonal in nature and will not be established as a permanent use.
- (3) Each permit shall be valid for a period of not more than two (2) calendar months and may be renewed by the Zoning Administrator for up to two (2) additional successive periods of two (2) months each, provided the season or event to which the use relates is continued.

Sec. 28.10 APPEALS.

Appeals to the Board of Appeals may be taken by any person aggrieved, or by any officer, department or board of the Township. Any appeal from the ruling of the Zoning Administrator concerning the enforcement of the provisions of this Ordinance may be made to the Board of Appeals within five (5) days after the date of the Zoning Administrator's decision which is the basis of the appeal. The appellant must file with the Zoning Administrator a notice of appeal specifying the grounds for appeal. The Zoning Administrator shall immediately transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken.

- (A) **Stays.** An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board of Appeals after the notice of the appeal shall have been filed with him that, for reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the Board of Appeals or, on application, by the Circuit Court when due cause can be shown.
- (B) **Representation.** Any party may appear in person or by agent or by attorney at a hearing considering his request or appeal.
- (C) **Fees.** A fee as established by the Township Board shall be paid to the Township Clerk at the time of filing application with the Board. The purpose of the fee is to cover any necessary advertisement and investigation expenses incurred by the Board of Appeals in connection with the appeal.

Sec. 28.11 DUTIES AND POWERS.

The Township Board of Appeals shall have the following specified duties and powers:

- (A) **Review.** Shall hear and decide appeals from and review any order, requirement, decision, or determination made by the Zoning Administrator in the administration of this Ordinance.

2. Official Zoning Decision as Consistently Administered for at Least Ten Years

- a. Sec. 3.25(B) allows temporary use approval to be granted for the temporary sale of merchandise in any district related to a seasonal or periodic event. The language further clarifies that "Such seasonal uses shall include the sale of Christmas trees, fireworks, farm produce at roadside stands, and similar activities."
- b. Directly related to this language, as Zoning Administrator I have consistently determined this language to mean the following. Further, this has been consistently administered in this way for at least ten years. Plus, any person aggrieved by this determination and this administration of the ordinance has the opportunity to appeal to the Zoning Board of Appeals.
 - 1) A roadside stand for the sale of merchandise would not be determined to be a garage sale because it would not be conducted in a garage or close proximity to a garage.
 - 2) A periodic event includes the sale of fireworks for Independence Day (particularly called out in the language of the ordinance) as long as the use met the standards listed in Sec. 3.25(B) for things such as parking and access.
 - 3) An event such as a clothing store having a special "back to school" sale or a "sidewalk sale" at its own location would be a periodic event.
 - 4) Seasonal events include the sale of Christmas trees for the Christmas season, the sale of pumpkins for the fall harvest season (including Halloween), the sale of flowers for the beginning of the summer growing season, farm produce at roadside stands (particularly called out in the language of the ordinance) and the similar types of things related to a particular season. These types of uses would be approved to locate at any district within the Township as long as the standards are met (such as for parking and access).
 - 5) The ordinance specifically allows the sale of farm produce at roadside stands and farm produce would be determined to be anything grown or produced on a farm. So fruits, vegetables, flowers and the like would be determined to be farm produce.
 - 6) However, the sale of bark and stones (for example, like Best Bark and Stone on Port Sheldon) would be determined to be an open air business and would have to adhere to the standards in the ordinance for such a use.
 - 7) The sale of other general merchandise (such as tee shirts, sweatshirts, purses, necklaces, candles, craft items, etc.) would NOT be determined to be periodic or seasonal sales, not even if these sales were conducted within a particular season. These items would also not be determined to be farm produce since they are not grow or produced on farms.
 - 8) This topic was brought to the attention of the Planning Commission at the time the sale of the sweatshirts and tee shirts was taking place at the corner of 48th Ave. and Fillmore. The Planning Commission determined at that time that they did not want to change the ordinance to allow the sale of any type of merchandise (other than what was specially called out in the language of the ordinance), such as items which are typically sold at businesses within the commercial district. The reason was because the Planning Commission determined that it would be detrimental to the community to allow tents to be pitched at various corners within the Township with all other types of merchandise for sale (other than what is particularly allowed). Consequently, the business with the sale of tee shirts and sweatshirts at the corner of 48th Ave. and Fillmore was determined to be in violation of the ordinance and enforcement measures were used to stop the use. Also, the sale of merchandise other than the farm produce (fruits, vegetables, flowers, etc.), such as purses and craft items, at the church at the corner of Baldwin and 20th Ave. was also found to be in violation of the ordinance and enforcement measures were used to stop the use.
 - 9) Again, the Zoning Ordinance provides the opportunity for any person aggrieved by the decision of the Zoning Administrator in the enforcement of the ordinance to appeal to the Zoning Board of Appeals. No person or company has ever (in the past 20 years) appealed this or any related decision.

3. **Due to the above noted reasons, the temporary sale of merchandise such as tee shirts, sweat shirts, purses, candles and crafts would not be approved for a temporary use permit (unless located at a commercial business that in the course of normal operations sold these items and the permit was for a particular event for such business).**

She further explained the following. This had been explained to the applicant many times, along with the opportunity given to him in Sec. 28.11 of the Zoning Ordinance to appeal the determination of the zoning administrator if he was aggrieved by the action of the zoning administrator. As noted in the ordinance, the application would have to file a formal application, pay the fee and attend the public hearing at the designated ZBA meeting. A notice of the public hearing would have to be published in compliance with the State law and property notices would have to be sent to the properties adjacent to his site at 48th Ave. and Fillmore, as required in the Michigan Zoning Enabling Act since the appeal was tied to a specific property. After the requirements had been fulfilled, the application would be placed on a ZBA meeting agenda. At that time, the ZBA would have the authority to hold a public hearing and make a determination as to whether to concur or not concur with the Zoning Administrator's determination and to interpret the provisions of the ordinance.

She also said that this situation had been brought to the attention of the Planning Commission in the past and the Planning Commission determined to leave the ordinance language as written to prohibit people from placing tents at street corners to sell general merchandise because this was not fair to the businesses in the community that paid to locate in commercial districts and paid taxes to operate there.

The zoning administrator stated that no formal application had been filed to appeal the determination to the ZBA or to request the ZBA for an interpretation of the ordinance language, no fee was paid, no notices were published and no property notices were sent. She said that consequently, it was inappropriate for the ZBA to act in a formal capacity in regard to this request and to either make a determination about the enforcement of the ordinance or to interpret the language in the ordinance.

There was discussion about the process to appeal a determination and to request an interpretation of the ordinance. There was also general discussion about the ordinance language.

Greg Honderd stated the following. The notices should be sent and published to give others the opportunity to speak on this topic. Although the zoning administrator briefly touched on it, the Planning Commission was opposed to allowing the general sales of merchandise on street corners in order to protect the businesses that located in the commercial districts within the Township and had a much higher overhead.

The ZBA directed Ed Hoezee to formally apply for a determination or interpretation and the ZBA would formally consider the request.

#160224-05 – Election of Officers

Joyce Weise and Kelly Walkotten nominated Tom Healy as chairperson.

Tom Healy and Kelly Walkotten nominated Joyce Weise as vice-chairperson.

Greg Honderd and Tom Healy nominated Kelly Walkotten as secretary.

Moved by D. Dale Mohr, seconded by Tom Healy to elect Tom Healy as chairperson, Joyce Weise as vice-chairperson and Kelly Walkotten as secretary.

MOTION CARRIED UNANIMOUSLY.

#160224-06 - Adjournment

Moved by Joyce Weise, seconded by Tom Healy, to adjourn the meeting at 8:20 p.m.

MOTION CARRIED UNANIMOUSLY.